



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** VESTLA Corporation--Reconsideration

**File:** B-234998.3

**Date:** May 1, 1989

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### **DIGEST**

1. Prior dismissal of protest filed 3 months late as untimely is affirmed, notwithstanding protester's assertion that it was unaware of bid protest timeliness requirements, because the protester is charged with constructive notice of Bid Protest Regulations through their publication in the Federal Register and the Code of Federal Regulations.
2. Where a contracting officer makes a nonresponsibility determination, referral to the Small Business Administration under the certificate of competency procedures is required by the Small Business Act.
3. The Small Business Administration may refuse to issue a certificate of competency for a reason different from the one the contracting officer relied on for nonresponsibility determination.

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### **DECISION**

VESTLA Corporation requests reconsideration of our dismissal of its protest under solicitation for offers (SFO) No. MWA70343 issued by the General Services Administration (GSA) for office space for the regional Federal Aviation Administration facility in Seattle, Washington.

We affirm our prior dismissal.

VESTLA protests that although it was the low offeror its offer was rejected because GSA questioned VESTLA's credit and capacity to perform the contract. VESTLA contends that the Small Business Administration (SBA) failed to issue it a certificate of competency (COC) on a basis different from that on which GSA questioned VESTLA's responsibility.

Our Bid Protest Regulations require that protests be filed not later than 10 days after the basis of protest is known

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or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). Since VESTLA filed its protest on March 23, 1989, 3 months after the SBA mailed a letter to VESTLA informing it that it was ineligible for a COC, we dismissed VESTLA's protest in part as untimely.

VESTLA argues that the above-cited regulation, 4 C.F.R. § 21.2(a)(2), is inapplicable to it because the timeliness requirements are not stated in the solicitation's Service of Protest clause or the Federal Acquisition Regulation. Although VESTLA may not have had actual knowledge of our timeliness rules, our Regulations are published in the Federal Register and the Code of Federal Regulations (C.F.R.) and therefore protesters are charged with constructive notice of their contents. A protester's professed lack of knowledge of these published regulations is not a basis for waiving their requirements. All Destinations, B-233505.3, Dec. 29, 1988, 88-2 CPD ¶ 640.

We also dismissed VESTLA's protest because the General Accounting Office generally will not review a nonresponsibility determination where a small business is concerned since by law the SBA has conclusive authority to determine the responsibility of a small business by issuing or refusing to issue a COC. 4 C.F.R. § 21.3(m)(3). VESTLA contends that the latter-cited regulation is not applicable here because GSA referred VESTLA to SBA at its own behest and without the knowledge of VESTLA.

Where a contracting officer makes a nonresponsibility determination, referral to the SBA for consideration under the COC procedures is required by the Small Business Act, 15 U.S.C. § 637(b)(7)(A) (1982), and the implementing Federal Acquisition Regulation § 19.602-1 (FAC 84-40). See Aero Innovations, Ltd., B-227677, Oct. 5, 1987, 87-2 CPD ¶ 332. Moreover, with respect to the basis on which SBA denied the COC, while SBA may evaluate information supplied by the contracting officer, it makes its own independent investigation of a firm's responsibility. We have explicitly held that it is reasonable, following this independent evaluation, for the SBA to refuse to issue a COC for a reason different from the contracting officer's. F.W. Morse & Co., B-227995, Oct. 26, 1987, 87-2 CPD ¶ 396.

The prior dismissal is affirmed.

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General Counsel